

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CIGNA INSURANCE COMPANY, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 00-186-JJF /
 : 99-605-JJF
 :
 DIDIMOI PROPERTY : **CONSOLIDATED ACTION**
 HOLDINGS, N.V. and :
 GENERAL ELECTRIC CAPITAL :
 CORPORATION, :
 :
 Defendants. :
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 DIDIMOI PROPERTY :
 HOLDINGS, N.V. and :
 GENERAL ELECTRIC CAPITAL :
 CORPORATION, :
 :
 Plaintiffs, :
 :
 v. :
 :
 CIGNA INSURANCE COMPANY, :
 :
 Defendant. :
 :
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Esquire of OBERLY & JENNINGS P.A., Wilmington, Delaware.
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MEMORANDUM OPINION

July 20, 2001

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is a dispute among the parties concerning the appointment of an umpire for the appraisal proceedings underway in this case. Pursuant to the Insurance Policy and the Memorandum Of Appraisal previously approved by the Court, the parties' designated appraisers are to select an umpire. Based on the letters the Court has received from the parties, it appears that the parties' appraisers have reached an impasse in their effort to select an umpire. As a result, the parties have presented the Court with five (5) candidates for selection and letter memoranda in support of each party's recommendation. (D.I. 110, 111, 112, 113).

In resolution of the parties' dispute, the Court selects Edward N. Cahn to serve as the umpire for the appraisal proceedings in this case. In reaching its decision, the Court has reviewed the information submitted by the parties and the materials referenced by the parties. In addition, the Court has independently researched this issue so as to satisfy itself that Mr. Cahn is the best available choice for an umpire.

After an initial review of the parties' submissions, the Court was reluctant to select Mr. Cahn, because he was a

former judge, indeed, a former United States District Court Judge. As such, the objections to Mr. Cahn's service by ACE American Insurance Company (formerly known as CIGNA insurance Company and hereinafter referred to as "ACE American Insurance") seemed relatively easy to predict, and therefore, the Court initially believed it could reason through the various objections to the other candidates and eventually settle on a candidate other than Mr. Cahn.

However, to avoid discounting Mr. Cahn without a more careful consideration of the issue raised by his former service as a judge, the Court revisited all of opinions cited by ACE American Insurance including this Court's previous decision in Nemours Foundation v. Gilbane, 632 F. Supp. 418 (D. Del. 1986), addressing conflicts of interest and the remedying "cone of silence." The Court's review of these decisions resulted in a comfort level sufficient to relieve its initial "anti-judge" approach to an umpire in this case.

Having satisfied itself that Mr. Cahn should not be initially excluded, the Court reviewed the qualifications of all the candidates and found them to be acceptable. The Court then reviewed the objections and comments regarding potential and actual conflicts and other matters of concern expressed by each party for each of the candidates under consideration.

Because the Court is convinced that all of the candidates are highly qualified and possess professional integrity, it will not detail the specific matters regarding each candidate that may have caused concern to the Court or the party opposing that candidate's selection. However, in general, the Court's concerns about the candidates involved appearances of possible bias or predetermined views by virtue of the candidate's prior employment or engagement. Nevertheless, the court's evaluation of these candidates did not end with this review. The Court weighed these "appearance of bias concerns" individually and among the candidates. In the Court's view, the objections and bias concerns asserted against Mr. Cahn were clearly more remote than the concerns raised by the parties regarding the other candidates.

Still resisting the appointment of a former judge despite the more apparent problems posed by the other candidates offered for selection, the Court examined Mr. Cahn's public record by consulting opinions he authored as a judge on issues related and unrelated to those presented here. After reviewing these decisions, the Court finds that there is no indication of any real bias or appearance of conflict or bias on the part of Mr. Cahn in favor of or against insurers or insureds. In addition, the decisions in the public record

rendered by Mr. Cahn clearly evidence that Mr. Cahn is a highly skilled decision maker and has applied that skill to make thorough and well-reasoned decisions on a broad and varied range of complex legal and factual issues.

After the review described above, the Court squarely confronted its initial reluctance to appoint a former federal judge and found it unsupportable in the context of the selection decision in this case. Accordingly, for the reasons discussed, the Court will appoint Mr. Cahn as the umpire for the appraisal proceedings in this case.

An appropriate Order will be entered.

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ORDER

At Wilmington, this 20 day of July 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Edward N. Cahn is appointed umpire for the appraisal proceedings in the above-captioned action.

UNITED STATES DISTRICT JUDGE